**IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH AT HYDERABAD**

**HON'BLE Mr. JUSTICE R. SUBHASH REDDY**

**Writ Petition No.17327 of 2000**

**Dated: November 15, 2007**

**Between:**

D. Prameela, W/o. Ram Reddy, aged about 56 years, Housewife, residing at C117, Hill Colony, Vanasthalipuram, Hyderabad.

… Petitioner

And

The Life Insurance Corporation of India, Represented by its Divisional Managar, (P&GS Division) Jeevan Prakash, 5-9-21, Secretariat Road, Hyderabad, and another.

… Respondents

## Order:

In this writ petition, the petitioner seeks a declaration by way of Mandamus to declare the action of the first respondent, Life Insurance Corporation of India, in not paying the assured sum of Rs.1,20,000/- on account of death of her husband who was an employee of the second respondent, Nalgonda District Cooperative Central Bank Limited, as

illegal and arbitrary.

2. The husband of the petitioner was an employee of the second respondent, Nalgonda District Cooperative Central Bank Limited and was working as Assistant General Manager. The first respondent, Life Insurance Corporation of India, a statutory body constituted under the provisions of Life Insurance Corporation Act, 1956 (for short 'the Act') introduced a scheme, namely, Group Savings-Linked Insurance (GSLI) for the employees of the Government, autonomous bodies and societies registered under the Cooperative Societies Act and other public sector undertakings to give insurance protection to their employees. As per the terms of the said scheme, employer acts as a coordinator between the employee and the Corporation, deducts the premium amounts from the monthly salary of the employees and remits the same in lumpsum to the first respondent-Corporation every month. In the instant case, the second respondent-Bank, a Society registered under the
A.P. Cooperative Societies Act, 1964, obtained a Master Policy for a group of its employees, which covered the late husband of the petitioner. For the entire group members, premium amounts were deducted including that of the husband of the petitioner for the month of December, 1995, and an amount of Rs.11,390/- was paid on
10-01-1996. The premium amounts were being deducted from the salary of the petitioner's husband regularly from the date of his joining into the scheme. But, however, he proceeded on sick leave from 01-03-1997 due to ill health on loss of pay. As per the terms of the policy, even in the absence of earnings by the employee, the second respondent was to continue to remit the premium amounts regularly. But, however, for the period from 01-03-1997, the premium amounts of the group were deposited without including that of the husband of the

petitioner.

The petitioner herself deposited the premium arrears to the tune of Rs.960/- on 12-11-1997 and Rs.120/- on 29-11-1997 before the second respondent-Bank by way of challan. Subsequently, the husband of the petitioner died on 02-12-1997. Though the petitioner has deposited the premium amounts which are due from 01-03-1997, on 12-11-1997

and 29-11-1997, but, however, the said amounts were not transferred to the first respondent-Corporation immediately. It is stated that the said amounts were deposited along with the premium amounts of other group members, in lumpsum, on 12-12-1997. After the death of the husband of the petitioner, on petitioner's request, second respondent submitted the claim in the prescribed form on 10-03-1998 by furnishing all the necessary information and particulars. On submission of such claim, first respondent addressed letter dated 20-10-1998 to the second respondent seeking further particulars and it is stated that the second respondent has complied the same by letter dated 28-10-1998. In proof of payment of the premium amounts by the petitioner on 12-11-1997 and

29-11-1997, the second respondent has produced remittance vouchers. But, however, in spite of the same, the first respondent has not paid the assured sum of Rs.1,20,000/- on the ground that the insurance made by the husband of the petitioner was lapsed for non-payment of premium amounts regularly.

3. It is the case of the petitioner that as much as the scheme is a Group Savings-Linked Insurance Scheme and as only one Master Policy was issued in favour of the second respondent-Bank, it cannot be said that the policy was lapsed due to non-payment of the premium

amounts by the petitioner. It is also the case of the petitioner that as much as the second respondent-Bank was acting as a coordinator for collecting the premium amounts on behalf of its employees from their salaries and in view of the deposit of the premium amounts by the petitioner on

12-11-1997 and 29-11-91997, the petitioner cannot be deprived of the assured sum on the ground that the said amounts were not transferred d to the first respondent-Corporation before the death of her husband.

4. The Assistant Secretary, (L&HPF) of the first respondent-Corporation has filed counter affidavit on behalf of the Corporation. In the counter affidavit, while denying the several allegations made by the petitioner, it is stated that the claim was settled as per her entitlement in terms of the policy by refunding the premium amount with interest. It is stated that in view of the availability of alternative remedies by way of a suit etc, this petition under Article 226 of the Constitution of India is not maintainable. While admitting that the scheme covered the husband of the petitioner and he was one of the beneficiaries under the policy obtained under the scheme, it is stated that as per the terms of the scheme, there was an obligation on the part of the second respondent-Bank to pay the premium amounts regularly to the Corporation. Such premium amounts were not paid and as such the policy was lapsed on account of non-remittance of the premium amounts of the husband of the petitioner. While acknowledging the receipt of an amount of Rs.14,385/- on 12-12-1997, including the arrears of premium of the husband of the petitioner, it is the case of the first respondent that as much as the policy was lapsed for non-payment of premium amounts in time, the Corporation has settled the benefits to the extent of savings together with interest as per the Rules and payment was also made. While reiterating that the Corporation

has repudiated the claim of the petitioner in accordance with the terms and conditions of the scheme, it is stated that there is no illegality or irregularity on the part of the Corporation in not paying the assured sum to the petitioner and it is prayed for dismissal of the writ petition.

5. In the counter affidavit filed by the second respondent-Bank, it is stated that petitioner is having an alternative remedy by way of an application before the consumer forum and as such writ petition is not maintainable. It is stated that as per the terms and conditions of the scheme, the premium amounts are deducted from the salary of the employees and there is no procedure to remit the individual premium as and when received from the employee in case of employees who are on leave on loss of pay. It is stated that as much as the first respondent-Corporation has accepted the arrears of the premium on 12-12-1997, which includes the arrears of premium of the husband of the petitioner, the first respondent-Corporation alone is liable to pay the assured sum to the petitioner, who is the wife of the deceased employee.

6. Heard Sri L.J. Veera Reddy, learned counsel for the petitioner, Sri M.V.S. Suresh Kumar for the first respondent-Corporation and Sri T. Amarnath Goud for the second respondent-Bank.

7. It is submitted by learned counsel for the petitioner that as much as the scheme itself is a Group Savings-Linked Insurance (GSLI) issued in favour of the second respondent-Bank, it is not open for the first respondent-Corporation to deny the assured sum on the ground that the policy was lapsed. It is submitted that, in any event, the second respondent was acting as a coordinator in terms of the scheme. As such, in view of the deposit of the premium amounts by the

petitioner on

12-11-1997 and 29-11-1997, it cannot be said that the insurance coverage of the husband of the petitioner was lapsed. While stating that the action of the first respondent is contrary to the terms and objectives of the scheme, learned counsel for the petitioner placed reliance on a judgment of the Supreme Court in **Delhi Electric Supply Undertaking Vs. Basanti Devi**[1]. Further, with regard to maintainability of the writ petition, learned counsel for the petitioner has placed reliance on judgments of the Supreme Court in **Harbanslal Sahnia Vs. Indian Oil Corpn. Ltd**[2] and **L. Hirday Narain Vs. Income-Tax Officer**[3]**.**

8. On the other hand, it is submitted by learned counsel for the first respondent that though the late husband of the petitioner was one of the beneficiaries in the scheme, but, he was on leave on loss of pay from 01-03-1997 and as per the terms of the scheme, the employer has not paid the premium amounts regularly to the Corporation. It is stated that as much as even the premium amounts deposited with the second respondent were not transferred to the first respondent-Corporation before the death of the husband of the petitioner, as such, petitioner is not entitle for the assured sum. While pleading that there is no illegality on the part of the first respondent in not paying the sum assured, as per policy, it is submitted that there are no grounds for interference by this court, in this petition filed under Article 226 of the Constitution of India. Reliance is placed by learned counsel for the first respondent in the case of **Chameli Khatun Vs. The State of Bihar and others**, reported in *Legal Digest – October 2000*.

9. It is submitted by learned counsel for the second respondent-Bank that as much as the petitioner's husband was on sick leave on

loss of pay and was not earning salary from the month of March, 1997, as such, the premium amounts were not paid by the second respondent-Bank. But, however, it is submitted that petitioner has paid arrears of premium in cash by way of challan on 12-11-1997 and 29-11-1997 and the same were deposited in the Bank on 12-12-1997, along with the premium amounts of the entire members of the group. It is stated that as much as the petitioner has paid the entire arrears of premium, the first respondent-Corporation is liable to pay the assured sum to the petitioner.

10. Before considering the rival contentions of the learned counsel for the parties, it is appropriate to notice the salient features of the policy issued by the first respondent-Corporation.

11. The first respondent, Life Insurance Corporation of India, is a statutory body under the Life Insurance Corporation Act, 1956. To cover various sectors for Life Insurance, several schemes have been evolved by the Corporation. One such scheme is Group Savings-Linked Insurance. Basically, the objective of the scheme, as such, appears to be for the benefit of employees who are working in public sector undertakings, societies etc. As per the rules of the policy, the employer acts as a coordinator and will deduct the premium amount of the group of employees and remit the same in lumpsum to the corporation. As per the eligibility criteria notified under the rules, regular employees who are aged not less than 18 years are eligible to join in the scheme and the employees who are not within the eligibility criteria on the date of introduction of the scheme are entitled for joining in the scheme as and when they satisfy the conditions of eligibility. As per Rule 4(d) of the Rules, no member shall withdraw from the Scheme while he is still an eligible employee satisfying the conditions

of eligibility notified in the Rules. As per Rule 7(i) of the Rules, every member shall pay a monthly contribution from the date of entry into the scheme and continue as such until the Terminal Date or otherwise as per the Rules. As per Rule 7(ii) of the Rules, the employer shall recover the contribution in respect of all the members from their salaries and remit the same in full to the Corporation for providing benefits in accordance with the Rules. As per Rule 11 of the Rules, Master Policy will be issued in favour of the employer by the Corporation incorporating the terms under which benefits are assured. As per Rule 15 of the Rules, in case a member does not earn salary which is sufficient to effect contribution for a particular month, the employer shall advance the contributions and remit the same along with the contributions in respect of all the members covered under the scheme.

12. Coming to the facts of the case on hand, it is not in dispute that the late husband of the petitioner was one of the members covered by the scheme introduced by the first respondent-Corporation from the month of January, 1996. From month to month, premium amounts were deducted from the salary payable to the husband of the petitioner regularly. However, unfortunately, from 01-03-1997, due to his ill health, the husband of the petitioner was on sick leave on loss of pay and continued as such. As per the terms of the policy, though it was obligatory on the part of the employer, i.e. the second respondent-Bank, to pay the premium amounts even in the absence of any earnings by the employees and to adjust the same thereafter, in spite of such a clause, second respondent-Bank did not pay the premium amounts from

01-03-1997 on behalf of the petitioner's husband. But, however, coming to know about the arrears on account of premium, the

petitioner herself deposited the arrears of premium with the second respondent Bank on 12-11-1997 and 27-11-1997 by way of challans, but, the said amounts were not transferred immediately to the first respondent-Corporation. Deposit of such arrears on account of premium with the second respondent-Bank is evident from the deposit vouchers, copies of which are filed in the material papers filed along with the writ petition. The premium amounts, including that of the arrears of the petitioner's husband were paid to the first respondent-Corporation on 12-12-1997. But, unfortunately, in the meanwhile, the husband of the petitioner died on 02-12-1997. In view of the said circumstances, the only question which arises for consideration is, in view of the deposit of arrears of premium by the petitioner on 12-11-1997 and 29-11-1997, can the first respondent-Corporation deny the assured sum to the petitioner on the ground that the said amounts have been transferred to the Corporation subsequent to the death of the husband of the petitioner. From a perusal of the salient features of the scheme and the rules applicable for the scheme, it is evident that such a scheme cannot be equated with a policy issued in favour of individuals, by the Corporation. It is a Group Savings-Linked Insurance scheme**.** The premium amounts which were being deducted from the salaries of the group of employees covered under the scheme were being deposited in lumpsum by the second respondent-bank with the first respondent-Corporation. There is only one Master Policy issued in favour of the second respondent-Bank for all the members of the group. The employer was acting as a coordinator to collect the premium amounts from the salaries of the employees and was transferring the said amounts to the Corporation. In strict terms, though the second respondent was not an Agent appointed as per the Regulations framed under the Act, to be an

Agent, but, in view of the terms of the policy, coupled with the definition of Agent, as defined under Section 182 of the Indian Contract Act, 1872, the second respondent was acting only as an Agent to receive the premium amounts from the employees, so as to transfer them by way of lumpsum to the first respondent-Corporation. Section 182 of the Indian Contract Act, 1872, reads as follows:

> " An Agent is a person employed to do any act for another or to represent another in dealings with third persons. The person for whom such act is done, or who is so represented is called the "Principal".

13. In view of the said language and the terms of the policy, it is to be held that the second respondent was acting as an Agency for the purpose of collecting the premium amounts on behalf of the employees and was transferring the same to the first respondent-Corporation. In view of the terms of the policy and the rules applicable in this regard, the judgment relied on by the learned counsel for the petitioner *Delhi Delhi Electric Supply's case,* (1 supra), supports the case of the petitioner. In the said judgment, the Supreme Court held as under:

> " In the present case, we are not concerned with the insurance agent. It is not the case of LIC that DESU could be permitted as an insurance agent within the meaning of the Insurance Act and the regulations. DESU is not procuring or soliciting any business for LIC. DESU is certainly not an insurance agent within the meaning of the aforesaid Insurance Act and the regulations but DESU is certainly an agent as defined in Section 182 of the Contract Act. The mode of collection of premium has been indicated in the Scheme itself and the employer has been assigned the role of collecting premium and remitting the same to LIC. As far as the employee as such is concerned, the employer will be an agent of LIC. It is a matter of common knowledge that insurance companies employ agents. When there is no

> insurance agent as defined in the regulations and the Insurance Act, the general principles of the law of agency as contained in the Contract Act are to be applied.
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> Agent in Section 182 means a person employed to do any act for another, or to represent another in dealings with third persons and the person for whom such act is done, or who is so represented, is called the principal. Under Section 185 no consideration is necessary to create an agency. As far as Bhim Singh is concerned, there was no obligation cast on him to pay premium direct to LIC. Under the agreement between LIC and DESU, premium was payable to DESU who was to deduct every month from the salary of Bhim Singh and to transmit the same to LIC. DESU had, therefore, implied authority to collect premium from Bhim Singh on behalf of LIC. There was, thus, valid payment of premium by Bhim Singh. The authority of DESU to collect premium on behalf of LIC is implied. In any case, DESU had ostensible authority to collect premium from Bhim Singh on behalf of LIC. So far as Bhim Singh is concerned DESU was an agent of LIC to collect premium on its behalf."

14. Though it is the case of the first respondent-Corporation that the policy was lapsed, but at no point of time, any intimation was sent in this regard by the first respondent-Corporation either to the petitioner or to the second respondent-Bank. As per the terms of the policy and the rules applicable to the policy, the policy will not automatically lapse on account of one of its group members not paying the premium for a particular month. On the other hand, there is a provision in the rules for receipt of the premium amount with interest in case of delays. In the instant case, it is also to be noted that in the absence of non-remittance of premium amounts by the second respondent-Bank, petitioner herself deposited the arrears on account of premium by way of challan in the second respondent-bank on 12-11-1997 and 29-11-1997. Such deposits were made covering the arrears of an individual in the group

and as much as the insurance is a Group Savings-Linked Insurance, the said arrears on account of premium were deposited with the premium amounts of other employees of the group on 12-12-1997. In that view of the matter, the premium amounts deposited by the petitioner with the second respondent-Bank were much before the death of the husband of the petitioner. Hence, there is no reason or justification for the first respondent-Corporation to deny the assured sum to the petitioner on the ground that the premium amounts were not transferred to it before the death of the husband of the petitioner. Though learned counsel for the first respondent relied on the judgment of *Chameli Khatun Vs. The State of Bihar and others*, but, in the said judgment, salient features of the policy, details of the policy and the effect of the provision under Section 182 of the Indian Contract At, 1872 have not been considered, to rely on the same.

15. It is also the case of the respondents, that in view of availability of alternative remedies to the petitioner, this petition, under Article 226 of the Constitution of India, is not maintainable. But, in this case, it is to be noted that the husband of the petitioner died on 02-12-1997 and after prolonged correspondence, the writ petition was filed in the year 2000 and has been pending before this court for several years. This court and the Apex Court time and again held that the rule of exclusion of jurisdiction on the ground of availability of alternative remedy is a discretion and not one of compulsion. In the absence of any serious factual disputes and also in view of the fact that the petition filed by the petitioner is pending before this court for last several years,

I am not inclined to accept the contention of the respondents to drive the petitioner to seek relief by other alternative remedies, at this stage. Further, the Apex Court, in *Harbanslal Sahnia's* case (2 supra) held that the rule of exclusion of writ jurisdiction on the ground of alternative

remedy is a rule of discretion and not one of compulsion. The petitioner was deprived of the benefits of insurance by the first respondent-Corporation, illegally and arbitrary, in spite of deposit of premium amounts by the petitioner before the death of her husband. As the writ petition was admitted in the year 2000 and has been pending from last several years, it is not a case to drive the petitioner, at this stage, to other alternative remedies to seek relief. The ratio laid down in

*L. Hirday Narain's case* (3 supra) also supports the case of the petitioner. In that view of the matter and in view of the fact that the arrears of premium were already paid by the petitioner before the death of her husband, petitioner is entitled for the assured sum of Rs.1,20,000/- from the first respondent-Corporation. Further in view of the lapse on the part of the second respondent in not paying the premium amounts, in the absence of earnings by the petitioner's husband, which resulted in inordinate delay for payment of the assured sum, the second respondent is liable to compensate the costs of proceedings to the petitioner.

16. For the aforesaid reasons, I allow the writ petition and direct the first respondent-Corporation to pay the assured sum of Rs.1,20,000/- to the petitioner, with interest at the rate of 9% per annum from the date of receipt of the claim till payment, within two months from the date of receipt of a copy of this order. However, it is open for the first respondent-Corporation to adjust the amounts which were earlier paid to the petitioner. I also award costs of the proceedings quantifying at Rs.20,000/- against the second respondent and direct the second respondent to pay such costs to the petitioner by way of

A/c payee cheque or Draft, within two months from the date of receipt

of a copy of this order.

**JUSTICE R. SUBHASH REDDY.**

November 15, 2007
**MRR**

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[1] **(1999) 8 SCC 229**
[2] **(2003) 2 SCC 107**
[3] **AIR 1971 SC 33**